

FILED VIA ECFS

May 19, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands – WT Docket No. 03-66 --*
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

Yesterday, Thomas Knippen of W.A.T.C.H. TV Company (“WTC”), John Bunce of WinBeam, Inc. (“WinBeam”) and the undersigned, met on behalf of the Wireless Communications Association International, Inc. (“WCA”) with Uzoma Onyeije and John Schauble of the Wireless Telecommunications Bureau regarding the *Notice of Proposed Rulemaking* (“NPRM”) in the referenced proceeding.

Messrs. Bunce and Knippen discussed the existing wireless broadband services WTC and WinBeam currently offer to the public. They quantified the substantial economic impediment to the expansion of those services into more rural areas caused by the Commission’s site-based licensing system, and illustrated their plans for deployment of additional facilities in rural areas upon adoption of the proposal advanced by WCA, the National ITFS Association (“NIA”) and Catholic Television Network (“CTN”) for restructuring the Multipoint Distribution Service (“MDS”) and the Instructional Television Fixed Service (“ITFS”) and eliminating site-based licensing in a substantial part of the band. Attached hereto are copies of materials that WTC and WinBeam distributed at the meeting to illustrate their current and planned service offerings.

Mr. Knippen also discussed the importance to WTC, which has invested approximately \$20,000,000.00 of capital in its system and currently offers over 200 channels of digitized audio and video programming to over 13,000 subscribers, as well as wireless broadband service to

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approximately 3,500 subscribers using both first generation frequency division duplex (“FDD”) and second generation time division duplex (“TDD”) technology, of the proposal advanced by WCA, NIA and CTN for allowing certain multichannel video programming distributors to “opt out” of the proposed transition plan.

The industry participants expressed extreme concern over any proposal that would strip incumbent licensees of spectrum in order to provide an opportunity for newcomers to secure access to spectrum. Messrs Bunce and Knippen discussed how their companies had accumulated their spectrum holdings through various secondary market transactions at great cost to WinBeam and to WTC, and that it would be fundamentally unfair to take a portion of that spectrum from them at this juncture in order to promote new entry that can occur without such Draconian measures. The industry participants noted that spectrum has been readily available in most markets through secondary market transactions, pointing out that approximately 40-50 percent of the MDS/ITFS spectrum (measured by MHz/pops) has changed hands through secondary market transactions (assignments, transfers of control, leases, and lease assignments) over the past year and that two of the four largest holders of MDS/ITFS spectrum today held no spectrum as little as a year ago. To illustrate the ready availability of spectrum, they pointed to the article in this week’s *Business Week* which establishes that although Craig O. McCaw has been active in the MDS/ITFS arena for just a few months, he already “holds the exclusive rights to radio spectrum in [Jacksonville, FL and] about 100 other cities.” They further noted that both WTC and WinBeam have been active in the secondary market and have been able to acquire spectrum in new markets over the past several months, and pointed out that as a result of the decisions by WorldCom, Inc. and Nucentrix Broadband Networks, Inc. to reject a wide range of leases as part of their Chapter 11 reorganizations, there has been a substantial quantity of spectrum available in large and small markets across the nation.

The industry participants also explained that reducing the bandwidth of each channel would have a substantial adverse operational impact. In addition, they noted that the 10% reduction in bandwidth under consideration would reduce the number of subscribers that can be served from each headend and thus materially increase the cost associated with serving a given number of subscribers in a region. The result, they noted, is that the economic viability of rural systems will be compromised, and certain marginal systems will not be built because the reduction in the maximum number of possible subscribers will eliminate potential profitability. In addition, it was noted that while the PCS and AWS bands are channelized based on multiples of 5 MHz, those bands are reserved exclusively for FDD technology and thus the challenges associated with TDD/FDD coexistence are not present. WCA’s representatives emphasized that if the 2.5 GHz band is to accommodate both TDD and FDD technology, it will be necessary for operators to provide some guardband when non-synchronized systems utilize adjacent spectrum. They noted that while two adjacent licensees will each have 16.5 MHz of spectrum under the WCA-NIA-CTN proposal, should one operate using TDD technology and one using FDD technology, it is likely that even under the best of circumstances guardband requirements will

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leave each licensee with just 15 MHz or less of usable spectrum given the limits of current filter technology.

Finally, the participants in the meeting discussed the unopposed requests that affiliates of WinBeam and WTC have before the Commission seeking additional time to construct facilities and the adverse consequences that denial of those requests would have on the ability of WinBeam and WTC to expand service into rural areas. They noted that both companies have made economically sound business decisions regarding deployment, and that the Commission's overly-expensive licensing scheme is substantially responsible for the failure of WinBeam, WTC and others to modify their licenses and deploy broadband facilities under the current rules. They urged the Commission to assure that licensees have a fair opportunity following adoption of the new rules to deploy.

Pursuant to Section 1.1206(b)(2), this notice is being filed electronically with the Commission via the Electronic Comment Filing System for inclusion in the public record of the above-reference proceeding. Should you have any questions regarding this summary, please contact the undersigned.

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

Counsel to the Wireless Communications
Association International, Inc.

Attachments

cc: Uzoma Onyeije
John Schauble



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Winbeam, Inc of Greensburg, Pennsylvania

Winbeam was formed in early 2000 to aggregate licensed spectrum in Pennsylvania and neighboring states. Winbeam has patiently assembled 16 properties to form a reasonably contiguous footprint in rural Pennsylvania and the smaller cities of Pennsylvania.

Winbeam constructed a generation 1 Hybrid system in October, 2001 in Altoona. Winbeam applied for a license to deploy a second generation Navini system in September, 2003. We hope to receive that license soon. We believe that the Navini generation 2 systems will have much more attractive economics than generation 1. We have worked closely with Ntelos and Rioplex to observe what we understand to be successful deployments in areas similar to Pennsylvania. The new rules for licensed spectrum deployment would accelerate our deployment dramatically.

Winbeam has four primary districts which it will develop:

1. **Erie**

Once the first site is successful, Erie County is the prototypical district that is underserved by cable and DSL. We are eager to extend service to the area.

2. **The I-99 to west of Harrisburg district**

We have made substantial progress extending from our initial Altoona site 13 miles north to Tyrone. Soon we will move to the south and east to the next county, Huntingdon. We were forced to use unlicensed spectrum, because the economics preclude absorbing the cost and delay of getting licenses for the smaller, scattered markets. Licensed spectrum would serve these areas better. We have the spectrum and would like to use it. But we need the new rules to make it economic.

3. **The Harrisburg, York, Lancaster market**

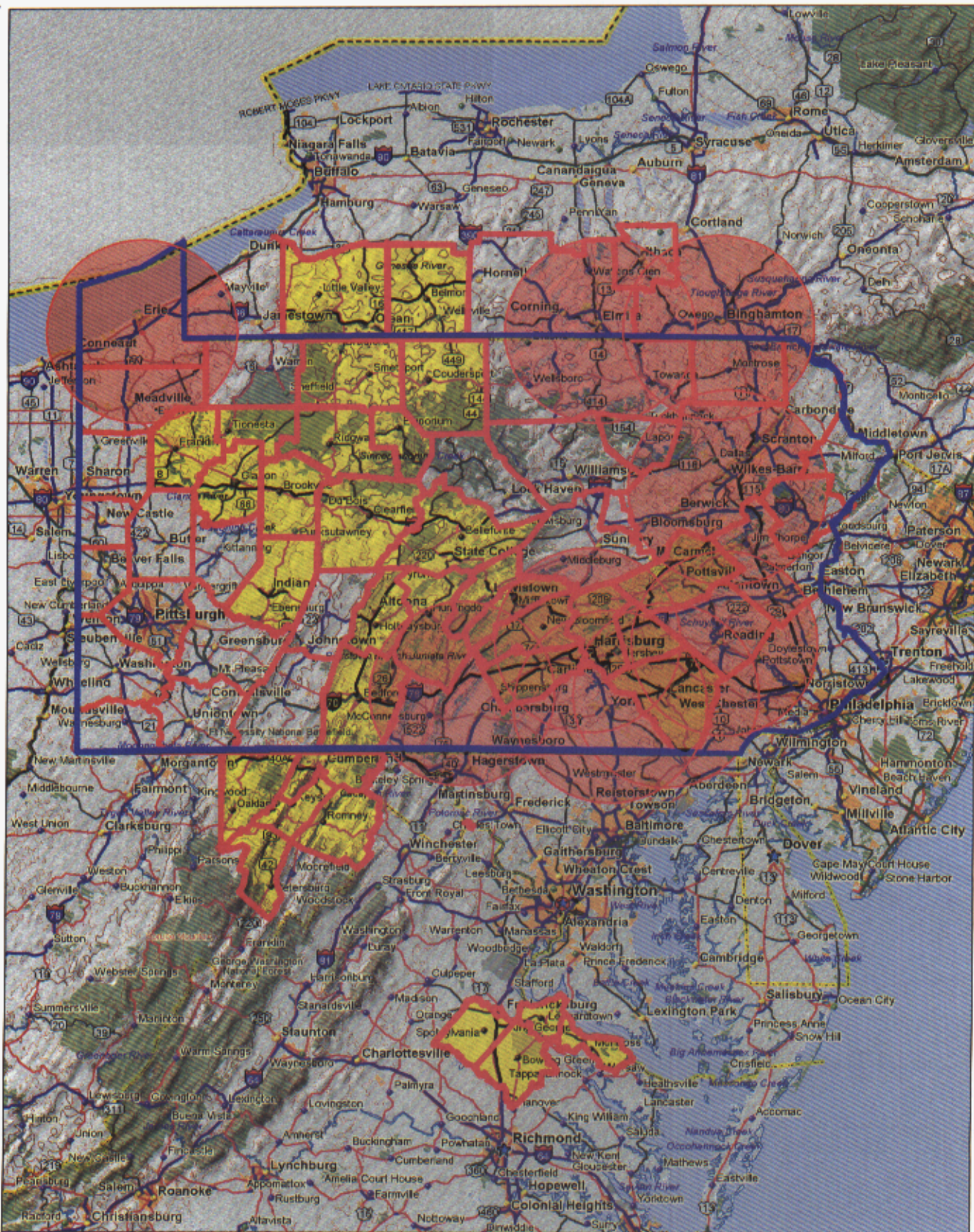
This is Winbeam's densest market. Once we make an initial deployment, we would like to move rapidly to build out the region. The new rules would facilitate that tremendously.

4. **Reading, Wilkes-Barre, Scranton, Binghamton**

While this is a little different than districts 1 and 2, the cumulative economics and need for rapid deployment are similar to the regions described above.

Winbeam desires to build an ISP brand in the commonwealth of Pennsylvania. We believe that the technology is practical and economic. We believe that the licensed spectrum advantages make it the best technology for rural areas and small cities in our state.

The contemplated new rules would help us deploy much more quickly. We urge the Commission to enact those new rules.



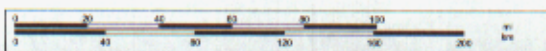
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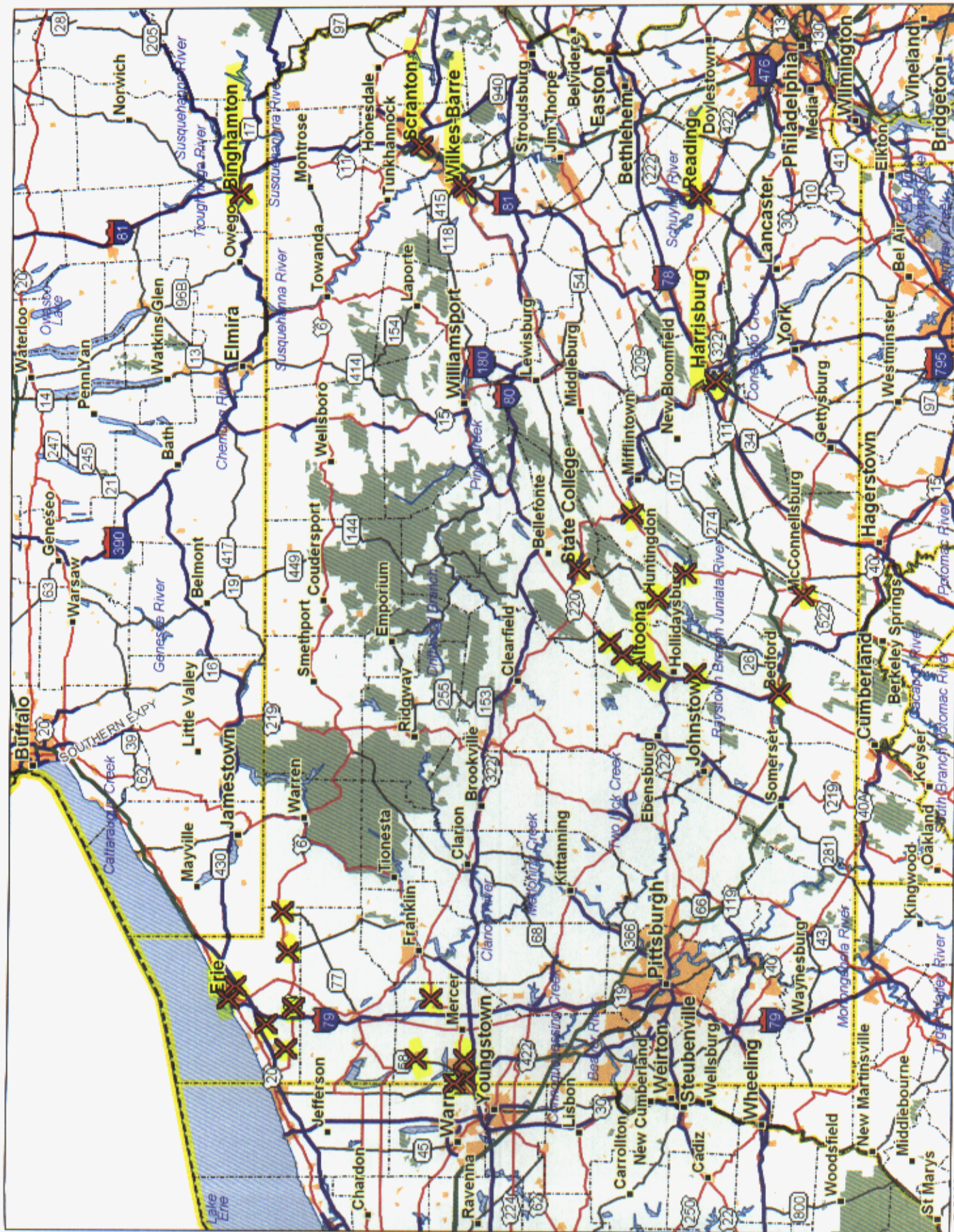
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Antique Map Series

Scale 1:100,000

1 inch = 10 miles

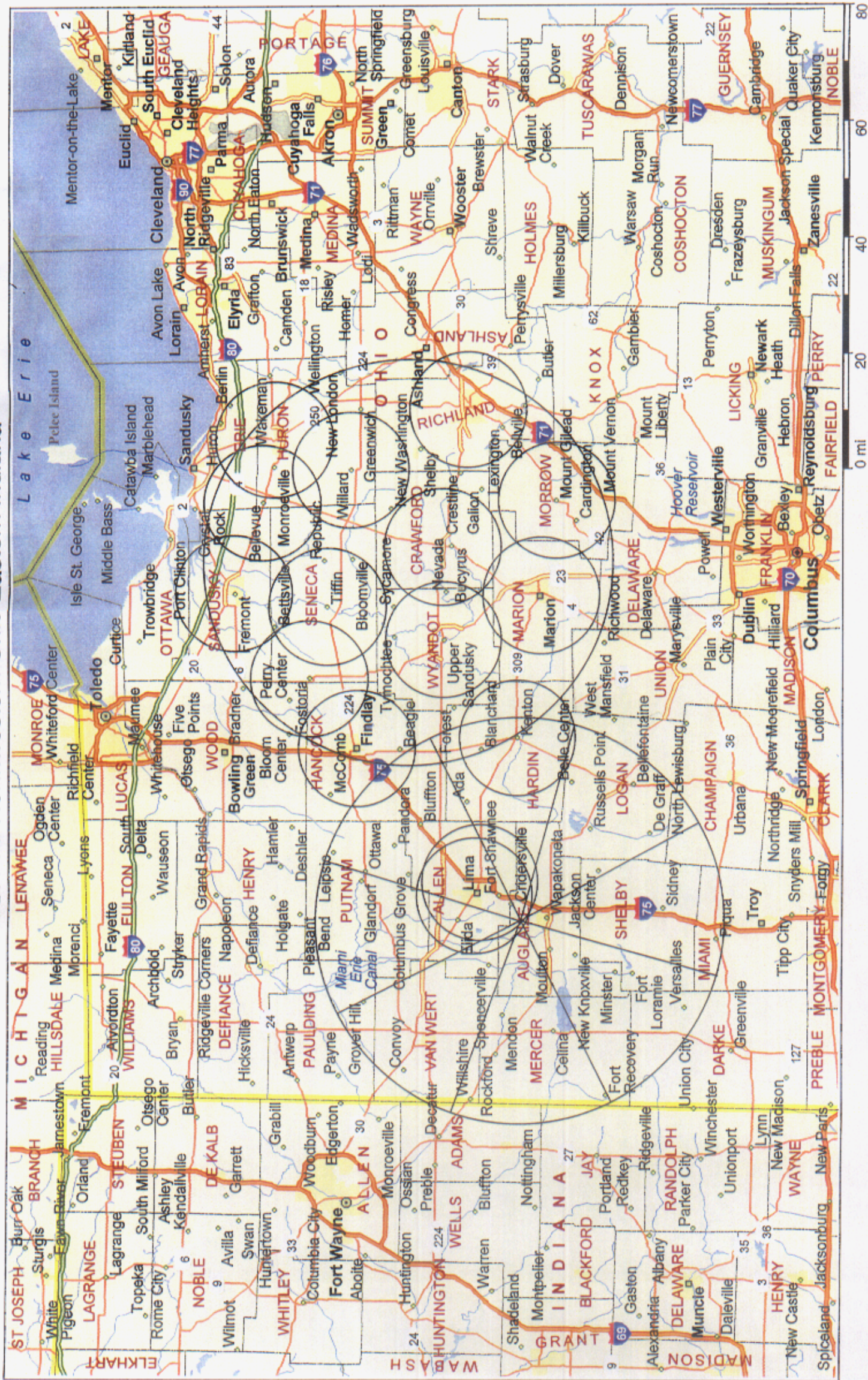




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Scale: 1 : 2,200,000 Map Rotation: 0° Magnetic Declination: 10.6°W

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| SHOWTIME | \$12.99 |
| STARZ!/ENCORE SUPER PK | \$11.99 |
| HBO | \$12.99 |
| HBO/CINEMAX MULTIPLEX | \$19.99 |

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DIGITAL CHANNEL LINEUP

| BASIC TOP 60 SERVICE | | DIGITAL TOP 100 SERVICE | |
|----------------------|------------------------------|--------------------------------|----------------------------|
| | | (BASIC TOP 60 + THE FOLLOWING) | |
| 1 | Information Channel | 105 | Speed Channel |
| 5 | KTLA Los Angeles | 108 | FOX SPORTS WORLD |
| 7 | WHIO CBS Dayton | 109 | Outdoor Channel |
| 9 | WGN Chicago | 110 | Sportsman Channel |
| 10 | WBNS CBS Columbus | 111 | The Golf Channel |
| 11 | WPIX New York | 112 | ESPN News |
| 13 | WTVG ABC Toledo | 113 | ESPN Classic Sports |
| 18 | WLQP UPN Lima | 216 | CNN FN |
| 21 | WPTA ABC Ft. Wayne | 330 | Independant Film Network |
| 22 | WKEF NBC Dayton | 403 | Discovery Kids |
| 25 | WOHL FOX Lima | 404 | Discovery Science |
| 27 | WBGU PBS Bowling Green | 406 | Discovery Home and Leisure |
| 35 | WLIO NBC Lima | 408 | Discovery Civilization |
| 38 | WSBK Boston | 409 | Discovery Wings |
| 44 | WTLW Rel Lima | 414 | DIY (Do It Yourself) |
| 55 | WFFT FOX Ft. Wayne | 418 | Biography |
| 65 | America One | 502 | Nickelodeon Games & Sports |
| 77 | TV Data | 503 | Noggin |
| 100 | ESPN Now | 514 | Toon Disney |
| 101 & 2 | ESPN 1 | 531 | MTV2 |
| 103 & 4 | ESPN 2 | 601-645 | Digital Music Channels |
| 106 | FOX SPORTS OHIO | 758 | Hallmark Channel |
| 107 | FOX SPORTS OHIO - ALTER. | 759 | Lifetime Movie Network |
| 201 | FOX News | 763 | E - Entertainment |
| 202 | CNN | 764 | Court TV |
| 203 | CNN Headline News | 766 | WE |
| 204 | MS - NBC | 767 | Game Show Network |
| 214 | The Weather Cannel | 768 | BBC America |
| 215 | C-SPAN 1 | 771 | PAX |
| 310 | Turner Classic Movies | PREMIUM SERVICES | |
| 320 | American Movie Classics(AMC) | 801 | HBO |
| 401 | Discovery | 802 | HBO Plus |
| 402 | Home and Garden | 803 | HBO Signature |
| 407 | Discovery Health | 804 | HBO Family |
| 410 | The Food Network | 805 | HBO Comidy |
| 411 | A & E | 806 | HBO Zone |
| 412 | Animal Planet | 807 | HBO Latino |
| 413 | The History Channel | 811 | Cinemax |
| 415 | The Learning Channel | 812 | More Max |
| 416 | The Travel Channel | 813 | Action Max |
| 419 | Tech TV | 814 | Thriller Max |
| 501 | Nickelodeon | 815 | W Max |
| 512 | Disney | 816 | @ Max |
| 515 | Cartoon Network | 817 | Outer Max |
| 516 | TV Land | 818 | 5 Star Max |
| 523 | The National Network | 821 | Showtime |
| 530 | MTV | 822 | Showtime Too |
| 542 | VH-1 | 823 | Showcase |
| 556 | CMT | 824 | Showtime Extreme |
| 557 | Great American Country | 825 | Showtime Beyond |
| 560 | EWTN | 831 | The Movie Channel |
| 561 | Inspirational Network | 832 | The Movie Channel 2 |
| 562 | Trinity Broadcast Network | 841 | Flix |
| 580 & 8 | QVC | 842 | Sundance Channel |
| 581 | Home Shopping | 851 | Encore |
| 582 | Shop NBC | 852 | Encore Love Stories |
| 718 | USA | 853 | Encore Westerns |
| 719 | TBS Alanta | 854 | Encore Mystery |
| 729 | ABC Family Channel | 855 | Encore Action |
| 738 | TNT | 856 | Encore True Stories |
| 760 | Lifetime | 857 | Wam |
| 761 | Comedy Central | 861 | Starz! |
| 762 | SCI-FI | 862 | Starz!2 |
| 765 | FX | 863 | Black Starz! |
| 769 | Soap Net | 864 | Starz! Family |
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